

6150  
6148  
584  
5982  
6148  
6149  
6352

818  
5232  
5421  
636  
5425  
5980  
5981

STATE OF CONNECTICUT  
DEPARTMENT OF CHILDREN AND FAMILIES  
PUBLIC HEARING TESTIMONY OF  
COMMISSIONER SUSAN I. HAMILTON, M.S.W., J.D.

6353  
HUMAN SERVICES COMMITTEE  
FEBRUARY 10, 2009

**S.B. No. 818 (RAISED) AN ACT CONCERNING THE ROLE AND RESPONSIBILITY OF THE DEPARTMENT OF CHILDREN AND FAMILIES IN SAFE HAVENS CASES.**

The Department of Children and Families has submitted S.B. No. 818 AN ACT CONCERNING THE ROLE AND RESPONSIBILITY OF THE DEPARTMENT OF CHILDREN AND FAMILIES IN SAFE HAVENS CASES to the Human Services Committee for your favorable consideration and we would like to take this opportunity to thank you for raising this bill on our behalf.

This bill clarifies DCF's role and responsibility in Safe Havens cases. The good news is that there have been a number of children who have been afforded important protections due to the Safe Havens law. However, the necessary legal proceedings to free the child for adoption are not clearly spelled out and have been interpreted differently by the courts. The intent of this proposal is to clarify the ambiguities in the current law, especially as it relates to parents who, due to certain circumstances, do not remain anonymous. This will serve to speed the legal proceedings and ensure that biological parents are afforded with the necessary due process so that a child is not potentially subject to lengthy custody litigation after the adoption has been finalized.

The legislature passed this very important initiative in 2000 and the Governor, along with DCF and others, have been aggressively promoting it in order to save infants who might otherwise be abandoned. As you know, this law allows parents, who feel they cannot care for their newborns, to leave them in the care of hospital personnel.

The Department of Public Health (DPH) has suggested that we consider an amendment for the sole purpose of allowing DPH to seal the original birth record if one is already on file. As currently written, the Safe Haven laws do not permit the identifying information of a parent or infant to be disclosed to DPH. This becomes problematic in situations where a birth certificate has already been filed in the state's birth registry system prior to the child being relinquished under the Safe Haven Act. Because the DPH has not been provided the original name of the infant, it has no way to seal the original birth record, thus it remains a valid record available to the parents named on the certificate, as well as other relatives. This situation allows for the possibility of fraud and other misuses of the birth certificate.

We are willing to work with DPH and the Committee to narrowly craft language to address this issue, while protecting the integrity of this important program.

**Proposed H.B. No. 5232 AN ACT CONCERNING A CHILD'S AUTHORIZATION OF A  
CLINICAL TREATMENT PLAN FOR PSYCHIATRIC AND COUNSELING  
SERVICES.**

The Department of Children and Families offers the following comments regarding **Proposed H.B. No. 5232 AN ACT CONCERNING A CHILD'S AUTHORIZATION OF A CLINICAL TREATMENT PLAN FOR PSYCHIATRIC AND COUNSELING SERVICES.**

This proposal emanates from a provision of DCF regulations concerning Licensure of Outpatient Psychiatric Clinics for Children. Subsection (l) of section 17a-20-42 of the Regulations of Connecticut State Agencies provides that "The treatment plan shall be signed by the chief administrator of the clinic or his designee; the child, if he is capable of doing so, and the child's parent or guardian." The intent behind this provision is to ensure the engagement in the development of care plans for the child and family, as well as assuring their active participation in treatment.

Issues regarding the sign-off of the treatment plan by a child have been raised periodically during licensing reviews conducted by the Department. In most cases the current practice is consistent with the requirements of this regulation.

We look forward to learning more about the origins of this bill.

**Section 17a-20-42. Treatment plan**

- (a) The clinic shall ensure that there is an individualized treatment plan for each child within thirty (30) calendar days of the child's entry into the clinic's program unless documentation demonstrates why this was not possible.
- (b) The treatment plan shall specify measurable and time-bounded goals and objectives to be achieved by the child and family in order to establish or re-establish emotional health.
- (c) These goals shall be based on periodic assessments of the child and, when appropriate, the child's family.
- (d) The treatment plan shall specify any specialized services or treatment to be provided by the clinic as well as identify the person responsible for implementing or coordinating the implementation of the treatment plan. The treatment plan shall include referrals for relevant services that the clinic does not provide directly.
- (e) The treatment plan shall delineate the specific criteria to be met for termination of treatment. Such criteria shall be part of the initial treatment plan and all subsequent plans.
- (f) The treatment plan shall identify the supports and resources that may be required for discharge.
- (g) Preliminary plans for discharge shall be discussed as well as alternative aftercare programs, when appropriate.
- (h) The treatment plan specifies the frequency of treatment procedures.
- (i) The treatment plan shall specify the anticipated discharge date.
- (j) The number of contacts shall be specified for the delivery of treatment services.

(k) The clinic shall ensure that the treatment plan and any subsequent revisions are explained to the child and his parent or guardian in language understandable to these persons.

(l) The treatment plan shall be signed by the chief administrator of the clinic or his designee; the child, if he is capable of doing so, and the child's parent or guardian.

(m) In accordance with the treatment plan, each record shall contain notes which document services provided and progress made toward goals and objectives. Each note shall be typewritten or entered in ink by a qualified staff member or consultant and shall be dated, legibly printed, signed by the person making the entry, and include the person's title.

(n) The clinic shall have policy and procedures governing the use of special treatment procedures which shall be consistent with state statutes and regulations, and shall receive prior approval by the department.

(o) The treatment-planning process is designed to ensure that care is appropriate to the individual's specific needs and shall provide an assessment of the severity of his or her condition, impairment, or disability.

(p) The treatment plan shall reflect the individual's clinical needs and condition and identify functional strengths and limitations.

**H.B. NO. 5421 (COMM) AN ACT CONCERNING PROCEEDINGS AND OPERATIONS  
OF THE DEPARTMENT OF CHILDREN AND FAMILIES.**

The Department of Children and Families offers the following comments regarding **H.B. No. 5421 AN ACT CONCERNING PROCEEDINGS AND OPERATIONS OF THE DEPARTMENT OF CHILDREN AND FAMILIES.**

The Department supports **Sections 2 and 3 of House Bill 5421** which together require that unauthorized disclosure of Department records be reported in writing and that whistleblower protections be afforded to persons reporting such unauthorized disclosures. Presently, Department employees are expected to maintain the strictest confidentiality, and there are multiple and redundant systems in place designed to prevent and/or identify such breaches. When such breaches do occur, they are swiftly dealt with through discipline of the involved employees.

While DCF has concerns regarding the language in **Section 4**, the Department wholeheartedly supports the concept of placement of children with relatives whenever this is safely possible and in the child's best interests. In fact, Department policies and procedures require social work staff to diligently search for and assess relatives in every case where an out-of-home removal is necessary. In addition, the identification of and placement with relatives is a key concept underlying the recent federal Fostering Connections to Success and Increasing Adoptions Act of 2008 which the Department is in the process of implementing agency-wide.

**Sections 5 and 6** apply to guardianship and termination proceedings in probate court. While the Department is not usually a party in these cases and, therefore, has no position on the proposed language as it relates to those cases, we would like to note that establishing a rebuttable presumption of relative fitness may not be appropriate in all cases.

The Department supports the language in Section 7 of H.B. 5421, which states that the mere fact that a parent has applied for or received voluntary services for his or her child should not be "used against" the parent in a subsequent child protection investigation, study or proceeding. The Department encourages the use of voluntary services whenever possible, and certainly should not penalize parents for simply applying for or availing themselves of these services.

**Proposed S.B. No. 636 AN ACT CONCERNING THE PRESUMPTION OF INNOCENCE AND PRESERVATION OF CONSTITUTIONAL RIGHTS IN PROCEEDINGS ALLEGING CHILD ABUSE OR NEGLECT BY A PARENT OR GUARDIAN.**

**Proposed H.B. No. 5425 AN ACT PROHIBITING RELIANCE ON A THEORY OF PREDICTIVE NEGLECT OR PREDICTIVE ABUSE IN THE ADJUDICATION OF CHILD NEGLECT AND ABUSE CASES.**

**Proposed H.B. No. 5980 AN ACT CONCERNING VERIFICATION OF INFORMATION BY THE DEPARTMENT OF CHILDREN AND FAMILIES IN CHILD ABUSE AND NEGLECT CASES.**

**Proposed H.B. No. 5981 AN ACT CONCERNING COMMUNICATION BETWEEN THE DEPARTMENT OF CHILDREN AND FAMILIES AND PARENTS OR GUARDIANS IN JUVENILE MATTERS.**

**Proposed H.B. No. 6145 AN ACT CONCERNING EVIDENCE IN DEPARTMENT OF CHILDREN AND FAMILIES PROCEEDINGS.**

**Proposed H.B. No. 6150 AN ACT REQUIRING INFORMATION TO BE PROVIDED TO PARENTS CONTACTED BY THE DEPARTMENT OF CHILDREN AND FAMILIES.**

The Department opposes a cluster of bills that seek to impose criminal court standards and procedures on juvenile court proceedings. As this Committee is aware, child abuse and neglect cases are not criminal proceedings. They are civil in nature, as they are in all states. This is because the purpose of child protection litigation is not necessarily to determine whether a particular person committed a particular act but, rather, whether a child has been abused or neglected and, if so, how that abuse or neglect may be mitigated. Our current statutory scheme is designed to balance the rights of parents to the integrity of their families with the rights of children to be free of abuse and neglect. This scheme is consistent with national standards and its various elements have been repeatedly upheld by Connecticut courts and other courts throughout the nation. Converting civil child protection proceedings to criminal cases will upset the delicate balance between child safety and family preservation, create unnecessary delays and barriers to presenting a legally sufficient case to the juvenile court, and add unnecessary procedures to what is already a careful and thorough judicial review process. Together, these bills could create a level of risk to children that is unprecedented in the nation, and constitutionally unnecessary. The Department believes strongly in protecting the constitutional rights of all the children and families it serves, and the current statutes, policies and procedures are already in place to ensure these rights are protected.

House Bill No. 5425 seeks to change the burden of proof in a child abuse or neglect cases to "beyond a reasonable doubt." The burden of proof in all civil cases, including neglect and abuse

cases, is "by a fair preponderance of the evidence." Decisions from the Supreme Courts of the United States and of Connecticut have repeatedly upheld this standard as applied to child protections proceedings, and there is no reason to deviate from what has become black letter law.

**House Bill No. 5425** also prohibits the so-called "predictive neglect" theory which similarly finds support in appellate court decisions. Put simply, this theory posits that when the siblings of a child have been abused or neglected, and the conditions in the home have not abated, it can be "predicted" that there is a high likelihood that the child may also be abused or neglected. Thus, DCF is not required to wait until the child has suffered actual harm before intervening. When such cases are litigated, our courts have done an outstanding job of balancing the rights of parents to show that they have rehabilitated against the state's responsibility to step in before a child is harmed. This bill would seriously jeopardize the safety of children by prohibiting the Department and the courts from taking preventative action.

**Senate Bill 636** also seeks to impose criminal court standards on civil juvenile court proceedings. The current standard of evidence requires that the state bear the burden of proof which, as the courts have repeatedly held, fully protects the constitutional rights of the parents and of the children who are the subjects of the proceedings. There are no "guilty" or "innocent" verdicts in child protection proceedings; the focus is, as it should be, on the condition of the child.

The Department also opposes **House Bill No. 5980** as unnecessary. All petitions filed in court, whether by the Department or by the Judicial Department's probation staff, must be proven in court by a fair preponderance of the evidence. A neglect or abuse petition, for example, must be filed with a supporting Summary of Facts which details the allegations that underlie the legal bases of the petition. As with all court pleadings, neglect and abuse petitions that are not supported by facts are subject to dismissal. This rarely, if ever, happens, however, because the Department's policies and procedures require comprehensive and detailed investigations, standardized risk and safety assessments, and reasonable efforts to ameliorate the conditions in the home before bringing a case to court. In addition, in those cases that do require court action, the Department is expected to update and expand on the information presented through social studies, in court reviews and status reports. These procedures ensure that judges have the best available information in a timely manner.

**House Bill No. 5980** also includes a provision in this bill apparently preventing the Department from including the fact that a parent has refused voluntary services in its legal pleadings. While the Department respects the fact that a parent has the right to refuse to accept services voluntarily, we also have an obligation under state and federal law to inform the court of reasonable efforts made to avoid bringing the petition. Therefore, the Department must be free to include the in its Summary of Facts and other documentation all services offered to the family, whether the family chose to participate in those services, and the outcomes.

With respect to **H.B. No. 5981**, as this Committee knows, it is the Department's statutory mandate to investigate allegations of child abuse and neglect. DCF does not conduct criminal investigations and, therefore, the agency is not constitutionally required to inform those suspected of abuse or neglect of their legal rights. Nonetheless, while we oppose the enactment

of a specific statutory provision regarding notice of parent's rights, we do appreciate the intent behind this bill. In fact, our investigators already provide our clients, at the first face-to-face meeting with "A Parent's Right to Know," a brochure that provides virtually the same information as required by this proposed bill. In addition, we will be happy to work with members of the Committee to make additions or changes to this brochure if you believe that is appropriate.

The Department also opposes **House Bill No. 6150** which requires that we provide parents with written copies of allegations and relevant documents immediately upon the commencement of an investigation. The Department receives child abuse and neglect referrals through the Hotline telephone system. Therefore, and particularly when allegations are serious and the Department must respond quickly, written documentation is not always immediately available. Our policy requires that investigators, of course, verbally review the general allegations with parents at the start of all investigations, and existing law already allows parents access to virtually all Department records at any time.

Again, **House Bill No. 6145** attempts to impose criminal court procedures on civil juvenile court proceedings. Existing case law, statutes, rules of evidence and Practice Book provisions already adequately cover the admission or exclusion of hearsay evidence from court proceedings. This bill goes even further, however, in that it seeks to impose rules of evidence on the out-of-court process of evaluating the parties. It is easy to see how, if this bill is passed, the orderly and efficient proceedings of court may become unnecessarily mired in procedural barriers as the parties and attorneys contest what may be disclosed to evaluators and whether it constitutes hearsay, and what is or is not exculpatory evidence.

<p><b>Proposed H.B. No. 5842 AN ACT CONCERNING FOSTER PLACEMENT AND EDUCATION.</b></p>
--

**Proposed H.B. No. 5842 AN ACT CONCERNING FOSTER PLACEMENT AND EDUCATION**, which allows a child in foster care to remain in the same school he or she attended prior to placement, reflects the growing awareness throughout the country that educational stability is a key factor in determining the future success of a child. Recently, Congress enacted a similar provision as part of the Fostering Connections to Success and Increasing Adoptions Act of 2008, and all states will be expected to follow suit as a condition of the continued receipt of federal funding. While the Department fully endorses the concept of educational stability for foster children, the details of implementing this policy in Connecticut, and in particular the specifics of coordinating transportation between school districts are complicated. Therefore, the Department of Children and Families and the State Department of Education have convened a Task Force, which includes stakeholders in the child protection, education, and advocacy communities, the focus of which is to develop a cost efficient plan for implementation. Since House Bill 5842 as currently drafted contains no details, we will be happy to work with Committee members to further develop this concept.

**Proposed H.B. No. 5982 AN ACT CONCERNING DISCLOSURE OF DEPARTMENT OF CHILDREN AND FAMILIES RECORDS.**

The Department opposes **Proposed H.B. No. 5982 AN ACT CONCERNING DISCLOSURE OF DEPARTMENT OF CHILDREN AND FAMILIES RECORDS** which, while lacking in detail, appears to reverse the current confidentiality protections of state law by allowing access to "certain" unspecified records unless the parent requests confidentiality in writing. This penalizes parents who do not have the resources or are otherwise unable to take affirmative action to protect their rights to privacy. In addition, this bill also appears to require the disclosure of the identity of persons who cooperate with child protection investigations unless the person specifically requests anonymity in writing or the Department determines it necessary. Public policy encourages confidentiality in child protection investigations so that those with information relevant to the safety of children do not fear reprisal as a result of their cooperation. Under current procedures, all parties are entitled to access this information if it is necessary to the presentation of evidence during a child abuse or neglect proceeding. Thus, this bill does not provide any additional rights to any parties, but instead inserts unnecessary risk into the initial investigatory process.

**Proposed H.B. No. 6148 AN ACT CONCERNING RIGHTS OF JUVENILES UNDER THE SUPERVISION OF THE DEPARTMENT OF CHILDREN AND FAMILIES.**

The Department supports the underlying intent of **Proposed H.B. No. 6148 AN ACT CONCERNING RIGHTS OF JUVENILES UNDER THE SUPERVISION OF THE DEPARTMENT OF CHILDREN AND FAMILIES** but opposes the specific language as written. The concepts underlying this bill are promoted by the Department and inform our work every day. We fully support comprehensive assessments and treatment, educational services, non-discrimination, safe housing, freedom from abuse and unnecessary restraint, and legal safeguards for all children under our jurisdiction. All of these concepts are already provided for in existing statutes, including, but not limited to, Conn. Gen. Stat. §17a-16, Rights of Children and Youth under the Supervision of the Commissioner of Children and Families. We respectfully suggest that, rather than creating a duplicative statute, current law is amended where appropriate to incorporate those elements of this bill that are not already provided for.

**Proposed H.B. No. 6149 AN ACT CONCERNING ADMINISTRATIVE APPEALS OF FINDINGS OF CHILD ABUSE OR NEGLECT BY THE DEPARTMENT OF CHILDREN AND FAMILIES.**

The Department is similarly opposed to **Proposed H.B. No. 6149 AN ACT CONCERNING ADMINISTRATIVE APPEALS OF FINDINGS OF CHILD ABUSE OR NEGLECT BY THE DEPARTMENT OF CHILDREN AND FAMILIES**, which requires, upon request by a parent, a comprehensive administrative hearing during which all the evidence associated with the child protection case is reviewed prior to filing a neglect or abuse petition in court. The intent of this bill is unclear. It appears to require an additional lengthy, fully litigated layer of bureaucracy to child protection investigations before allegations of abuse or neglect can be presented to a

court. Not only is this unnecessary and inefficient, it obviously impacts the safety and wellbeing of the child involved and delays the ultimate resolution of the case.

**H.B. No. 6352 (RAISED) AN ACT CONCERNING OVERSIGHT OF THE  
DEPARTMENT OF CHILDREN AND FAMILIES**

**H.B. No. 6353 (RAISED) AN ACT CONCERNING THE ADMINISTRATION OF  
FOSTER CARE SERVICES.**

**H.B. No. 6352 AN ACT CONCERNING OVERSIGHT OF THE DEPARTMENT OF CHILDREN AND FAMILIES** and **H.B. No. 6353 AN ACT CONCERNING THE ADMINISTRATION OF FOSTER CARE SERVICES**, while lacking specific detail, are likely intended to serve as vehicles to address issues raised during the joint hearings of the Human Services Committee and the Select Committee on Children last fall.

The Department appreciates many of the concerns raised by Committee members and looks forward to working collaboratively to achieve consensus on a number of issues. We have already reached out to the leadership of both committees and welcome the continued dialogue.

The Department already produces numerous reports and data as part of its ongoing management and oversight of its programs and would be happy to discuss and share these reports with the committee members in our ongoing effort to educate the legislature about both the strengths of Connecticut's child welfare system as well as those areas needing improvement.